

Electronic Communication Meetings Proposal

The Virginia Freedom of Information Act (FOIA) governs electronic communication meetings at § 2.2-3708 of the Code of Virginia. The provisions were originally enacted in 1989, and have remained largely unchanged to date. FOIA places more stringent requirements on electronic communication meetings than on meetings where all of the members of a public body are physically assembled, such as a heightened notice requirements and a prohibition against holding closed meetings via electronic means.

In 1999, the General Assembly established a "pilot program" for electronic communication meetings that was not codified in the Code of Virginia but instead remains in the Acts of Assembly ("the Acts"). The Acts apply do not apply to all public bodies and apply only to audio/visual electronic meetings, not teleconferences. The Acts provide less stringent requirements for these meetings than those found in FOIA. Because the Acts were established as a pilot program to be used to gather data about electronic meetings and monitor whether the lessened requirements adversely affected public access to meetings, a sunset clause was included. Currently, the Acts will expire July 1, 2005 unless further legislative action is taken.

Included below is a table outlining some of the major differences between the electronic communication meeting provisions found in FOIA and the Acts. Staff recommendations can be found in the last column. These recommendations involve allowing the Acts to expire, while amending FOIA to include some of the provisions currently found in the Acts. Practical experience with both FOIA and the Acts indicate that many public bodies do not take advantage of the FOIA provisions because they are difficult to implement. For example, FOIA requires 30 days notice for an electronic meeting, yet many public bodies do not know that far in advance that a teleconference may be required for a particular meeting. On the other hand, the Acts apply only if a public body holds a meeting via video means, and public bodies often lack the technological resources or financial resources to engage in these kinds of meetings. The end result is that neither the provisions in FOIA nor the Act are used frequently enough to generate adequate data to examine the effect of electronic communication meetings on public access. Furthermore, many public bodies do not realize that the relaxed provisions of the Act exist, because they are not in the Code of Virginia. This recommendation, therefore, is based on the presumption that creating one standard for electronic communication meetings that addresses some existing logistical concerns will allow more public bodies to avail themselves of such meetings. By including reporting requirements about electronic meetings to both JCOTS and the FOIA Council, we will be able to monitor the practical experiences of public bodies that will be necessary to determine if further legislative changes are indicated in the future.

	2.2-3708	Acts of Assembly	Proposed
Entities subject to the provisions	Any state public body	State public bodies (i) in the legislative branch or (ii) with members who reside or work more than 55 miles from the meeting location	Any state public body
Types of meetings allowed	Telephonic or audio/visual communication	Audio/visual communications only	Telephonic or audio/visual communication
Notice	30 days	7 Days	7 working days
Meeting Locations; Public Access	A quorum must be physically assembled in one location; after a quorum is established, other members of the public body may meet from remote locations that are (i) in Virginia and (ii) open to the public	Three members, or a quorum of the public body if less than three must be at locations that are (i) in Virginia and (ii) open to the public. After the presence of three members or a quorum is established, other members may join the meeting from locations that are not in Virginia or are not open to the public.	A quorum of the public body must be at locations that are (i) in Virginia and (ii) open to the public. After the quorum is established, other members may join the meeting from locations that are not in Virginia or are not open to the public.

Reporting	Report must be filed with VITA by July 1 of each year identifying the total number of meetings held by the public body, the dates of the meetings, and the number and purpose of those meetings conducted electronically.	Report must be filed with JCOTS and the FOIA Council by Sept. 15 of each year identifying the total number of electronic meetings, the dates and purposes of the meetings, and for each electronic meeting indicate the number of sites, the type of electronic communications used, the number of participants, the number of remote participants, a summary of public comment received about electronic communications meetings, and a summary of the public body's experiences with electronic communications meetings.	Report must be filed with JCOTS and the FOIA Council by Dec.1 of each year identifying the total number of electronic meetings, the dates and purposes of the meetings, and for each electronic meeting indicate the number of sites, the type of electronic communications used, the number of participants, the number of remote participants, a summary of public comment received about electronic communications meetings, and a summary of the public body's experiences with electronic communications meetings.
Recording	Public body must make an audio recording of telephonic meetings and an audio/visual recording of audio/visual meetings. The recording must be preserved for three years.	Public body must make an audio or audio/visual recording of the meeting. The recording must be preserved for three years.	Public body must make an audio or audio/visual recording of the meeting. The recording must be preserved for three years.

Closed Meetings	Prohibited	Allowed	Allowed
Limit on annual Number of electronic meetings	A public body may not hold more than 25% of its meetings annually by electronic communications means, except in the case of an emergency.	No limitation on number of electronic communications meetings.	No limitation on number of electronic communications meetings.

§ 2.2-3708. Electronic communication meetings.

A. It shall be a violation of this chapter for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government or any committee thereof to conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. For purposes of this section, "public body" means any public body of the Commonwealth, but excludes any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government.

State public bodies may conduct any meeting, except closed meetings held pursuant to § [2.2-3711](#), wherein the public business is discussed or transacted through telephonic or video means. Where a quorum of a public body of the Commonwealth is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through telephonic means provided such participation is available to the public.

C. Notice of any meetings held pursuant to this section shall be provided at least 30 days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the locations for the meeting. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Thirty-day notice shall not be required for telephonic or video meetings continued to address an emergency as provided in subsection F or to conclude the agenda of a telephonic or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

The public body shall provide the Virginia Information Technologies Agency with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by telephonic or video means shall be recorded as required by § [2.2-3707](#). Votes taken during any meeting conducted through telephonic or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be

preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than 25 percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body that meets by telephonic or video means shall file with the Virginia Information Technologies Agency by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The nature of the emergency shall be stated in the minutes.

Acts of Assembly: Electronic communication meetings

(1999 Acts c.704, as amended by 2000 Acts cc. 910 and 983, 2002 Acts c. 429, 2003 Acts c. 346)

§ 1. That, in lieu of the provisions of § [2.2-3708](#), any public body, as defined in § [2.2-3701](#), in the legislative branch of state government or (ii) any authority, board, bureau, commission, district or agency of the Commonwealth whose membership includes persons who reside or work more than 55 miles from the meeting location as stated in the required notice for such meeting, shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 2. "Electronic communication means" means any combined audio and visual communication method that consists of, pertains to, is based on, is operated by, or otherwise involves the control of electrons or other charge carriers to exchange, send, receive, or in any way transmit the public business in a meeting.

"§ 3. 'Emergency' means an unforeseen circumstance that renders the notice required by § 6 impossible or impracticable and that requires immediate action.

"§ 4. 'Meeting' means the meetings, including work sessions, when sitting as a body or entity or informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any entity listed in § 1. 'Meeting' shall not mean any regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia.

"§ 5. For purposes of determining the presence of three members or establishing a quorum, every location where a member of the public body or Board is physically present to discuss or transact the public business through any electronic communication means in a meeting shall be (i) in Virginia and (ii) open and accessible to the public. After the presence of three members or a quorum is established, members of the public body or Board who are not physically present (i) in Virginia or (ii) at a meeting location which is open and accessible to the public, may participate in the discussion of and vote on any matter authorizing the transaction of any public business.

"§ 6. Except in an emergency, notice, including the time, date, place, and general purpose of the electronic communication meeting, shall be provided no less than seven days before the meeting in a manner reasonably calculated under the circumstances to apprise the public of the meeting information.

"§ 7. In an emergency, notice, including the time, date, place, and general purpose of the meeting, shall be provided contemporaneously with the notice provided to members of the Board or of the public body conducting the meeting in a manner reasonably calculated under the circumstances to apprise the public of the meeting information.

"§ 8. Notice for electronic communication meetings continued more than seven days after the meeting date shall be in the same manner as required by § 6. Notice for electronic

communication meetings continued less than seven days from the meeting date to (i) address an emergency or (ii) conclude the agenda of the electronic communication meeting, shall be made during the meeting prior to adjournment and shall include the date, time, place, and general purpose of the continued meeting. The basis for the emergency shall be stated during the meeting prior to adjournment and included in the minutes of the meeting, if minutes are required by § 2.2-3707.

"§ 9. At the time of the meeting, the public shall be provided an agenda and copies of any materials intended for distribution to members of the public body or Board which have been made available to staff in sufficient time for duplication and forwarding to all location sites where public access will be provided. If the meeting includes an opportunity for public comment, all persons attending the meeting at any of the meeting locations where a member of the public body or Board is physically present in Virginia at a location which is open and accessible to the public shall be afforded an opportunity to address the public body or Board. Any interruption in the electronic communication of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

"§ 10. Votes taken during any meeting conducted through electronic communication means pursuant to this act shall be recorded by name in roll-call fashion and included in the minutes of the meeting, if minutes are required by § 2.2-3707.

§ 11. Any public authorized by § 1 of this act to conduct electronic communication meetings shall make an audio or audio/visual recording of any such meeting which recording shall be preserved by such public body for a period of three years from the date of the meeting. Such recording shall be available to the public for inspection and copying pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

"§ 12. It shall be a violation of this act for any entity listed in § 1, or any members of such entities, to use the provisions of this act to violate the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) to discuss or act upon any matters over which such entities have supervision, control, jurisdiction, authority, or advisory powers.

§ 13. By September 15 of each year, public bodies authorized by § 1 of this act to conduct electronic communication meetings shall file with the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the number of sites for each meeting; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at each meeting; the number of remote participants; ~~and~~ a summary of any public comment received about the electronic communication meetings; and a written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience. The chairman of the public body authorized by § 1 to conduct electronic communication meetings shall make an announcement of the report required by this section during the course of any such meeting.